

OH

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March 26, 2005

California Regional
Water Quality Control Board
San Diego Region
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SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD
2005 MAR 29 P 1:53

Re: WPN:10-6000.05:haasj
Rescission of Cleanup and Abatement Order No. R9-1999-0211 (CAO)

I would like to comment on the proposed request to rescind Cleanup and Abatement order No. 99-211 (J03P02) for Orange County and City of Laguna Niguel.

Initiation of this instrument was to establish some controls on the number of fecal coliform bacteria that is present in the Stormwater outfall pipe, specifically outfall pipe J03P02. Implementation of this order meant monitoring these bacteria levels with the objective being to implement measures that would reduce the bacteria levels occurring at this outfall pipe. There is an element in this process that is noncontiguous that I hope you will take into consideration before making your final decision and course of direction.

What was the purpose for implementing this instrumentation to begin with?

On the one hand I get the impression that it was the amount of fecal coliform present that initiated this order but on the other hand your decision to accept a rescission indicates to me that maybe the purpose was because it was believed that Laguna Niguel was not exercising enough due diligence or demonstrating enough respect for compliance and maybe to put it bluntly kissing enough ass. Otherwise why would there attempt although unsuccessful suddenly become an acceptable standard. This should not be about personal feelings. This is about reaching a certain number and doing what it is going to take to get there. No more no less.

Stick to the original objective and stated measurable goals.

The water district is in effect changing the outcome objective midstream. Regardless of whether the problem is from sewage or from bird droppings, the counts remain higher than what is an acceptably

safe level. One has to ask why bird droppings would be higher in these areas than previously. It is implied that the number of bird droppings is larger than what is anticipated and calculated in the original numbers. Is this because the useable areas that birds can inhabit have become more restricted and therefore they are placing more stress on this area? If so, this is a situation that needs to be addressed, certainly Laguna Niguel would be an active participant in this planning and implement process as well. The results you have obtained should have stimulated more questions as to the underlying problem.

Accountability

It seems the water district is pleased that the source of the coliform is not human. Not that you have solved the problem but that you have discovered what the problem is not suddenly has become an acceptable rational for not continuing forward. Would you be happy if you were ill, went to see the doctor and the doctor said to you-well I can tell you that its not polio, its not meningitis and its not autism. Would you be happy with this answer? Would you be satisfied having to pay the \$300 dollar bill your going to get the following week? I do not think so. Why in this case would it be any different?

Avoid inadvertent assumptions

I believe it is important for every scientist to be careful of his or her inadvertent assumptions. The statement that bird coliform is less of a health hazard than human coliform is sort of like me telling someone that botulism is organic. It still does not mean that I would want it. You are also making the dangerous assumption that we have know of all the possible outcomes when people are exposed to bird droppings. We do not. Be careful with these types of assumptions less knowledge may not necessarily be indicative of a healthier alternative.

Stick to the objective

This is not a personal matter. What I read tells me that although Laguna Niguel has not achieved the bacterial counts specified they have shown due diligence towards exercising measures leading them in this direction. This is not on the Andy Griffith Show, and we are not sheltering Opie from having to recognize the hardships of the real world. So, despite the diligent efforts on the part of the City of Laguna Niguel the bottom line is they have not yet reached the safe count levels at this site. What is it that can be learned from this experience? It is that due diligence is or can be an effective strategy. Therefore, what is the implication of this considering the overall state of our water quality? Well to me it indicates that we need more due diligence not less. It says to me that maybe we need more o and Abatement orders. Not relieve them of one that is working. Two wrongs are not going to make this right.

What is being measured?

Diligence or Bacterial counts. Where the diligence of the city of Laguna Niguel is being taken into consideration, who is considering the diligence of the people, who complained,

spent their own money on testing and the endless amount of documentation on the part of individuals before agencies will take such measures in the first place. Where is the respect for this diligence? Where is their diligence being factored into this rescind? This is not about who is able to kiss more ass and make a good show of it. The bottom line is that diligent efforts should be routine among all cities but the problem is there still has not been enough diligence or whatever you want to call it, to meet the given objectives. *The less you stick to your objectives the more you lessen your own importance* and the less respect you will get when it comes to self enforcement towards these objectives because agencies will think there is an easier way to go about resolving their problems.

In Summary

The goals or objectives have not been reached yet the water district is willing to lift the Abatement order. Despite due diligence or that the source is different from what was initially anticipated *it still doesn't change the fact that there are problems that have not yet been adequately addressed and the numbers reflect this.*

I would like to add an important but not directly related note. *Having one consistent clear measurable objective will get you a lot farther than all the lawyers in the world. The problems of tomorrow are not going to be solvable with the solutions of yesterday.* In essence, what this comes down to is philosophical goals that are consistent with the measurable objectives. If these two are in line, you will fair much better in the end.

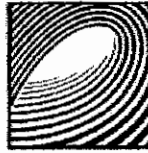
It seems to me what is being called for is more diligence on the part of more cities. Not less diligence from the one city that has been forced to exercise diligence. Only 1% of this earth's water is drinkable to begin with. Global warming is going to significantly influence that by the intussception of saline into fresh water supplies. We are already in the process of implementing Desalinization, which in my personal perspective is going to have additional costly and probably unacceptable repercussions. Each one of these endeavors commands a level of success that may not have been required in the past. *I urge you to take the course that you personally believe is the right thing to do. All living things depend on you to do this.*

Thank you for allowing me to comment on this most important issue.

Devora Hertz

JH
SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2005 MAR 30 P 12:41



**Surfrider
Foundation.**

668 North Coast Highway, #266
Laguna Beach, CA 92651

March 29, 2005

Jeremy Haas
Environmental Scientist
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Request to Rescind Cleanup and Abatement Order No. 99-211

Dear Mr. Haas:

On behalf of the Laguna Beach Chapter of Surfrider Foundation, I have reviewed the documentation relating to the request by the County of Orange and the City of Laguna Niguel to rescind Cleanup and Abatement Order #99-211 ("Order").

We commend the City of Laguna Niguel for the exhaustive investigative work and implementation of a variety of structural and non-structural BMPs that have been completed during the last five years in an attempt to address the problem of discharge of elevated levels of fecal coliform bacteria from the J03P02 storm drain. We also recognize that other investigations and monitoring in the Aliso Creek Watershed have demonstrated that conditions in the J03P02 storm drain are not unique and that the requirements of the Aliso Creek 13225 Directive, the MS4 permit for south Orange County municipalities and the anticipated Bacterial TMDL Implementation Plan make the Order redundant.

We therefore support the request to rescind the order.

One note of caution, however - we are somewhat concerned that the results of the Mission Bay epidemiological study are being interpreted too broadly. In that study, extensive measures had previously been taken to eliminate anthropogenic sources of bacteria. The bacteria detected in the study were primarily from birds and there was minimal detected incidence of swimming-related illnesses. The results of the study should not be applied to large watersheds that may have multiple animal (including extensive domesticated animal) fecal bacteria sources as well as possible human fecal sources of both bacterial and viral pathogens.

Sincerely,

Rick Wilson
Chairman, Laguna Beach Chapter
Surfrider Foundation

From: Roger von Butow <rvonbutow@cleanwaternow.com>
To: Bob Morris <BMorris@waterboards.ca.gov>, Jeremy Haas
<jhaas@waterboards.ca.gov>, John Robertus <jrobertus@waterboards.ca.gov>
Date: 4/22/05 9:28AM
Subject: PDF's for Cleanup & Abatement Order R9-1999-0211

Attached are the PDF's which I feel need catalogued/archived by
SDRWQCB staff.

These taken together constitute the response requested to the petition
for rescission of the Cleanup & Abatement Order R9-1999-0211.

CC: Mark Massara <mark.massara@sierraclub.org>, Markus Lenger
<markus@hydrologix.org>, Chad Nelsen <cnelsen@surfrider.org>, <bcaustin@defendthebay.org>,
<steve@hydrologix.org>, <joe@hydrologix.org>, <mrauscher@surfrider.org>, michael hazzard
<envhazzard@yahoo.com>, Rick Wilson <rwilson@surfrider.org>

3 ATTACHMENTS TO THIS EMAIL

1. April 22, 2005 letter
2. Table of Costs
3. FEB. 16, 2005 letter

CLEAN WATER NOW! COALITION

P.O. Box 4711, Laguna Beach, CA 92652 - 949.497.4816 - www.cleanwaternow.com



"To protect, preserve, and restore the integrity, stability, and biodiversity of the Southern Orange County watersheds, creek mouths, riparian and aquatic habitats."

To: John Robertus, XO, San Diego Regional Water Quality Control Board (SDRWQCB-R9)

CC: Staff

Bob Morris

Jeremy Haas

Date: April 22, 2005

Re: Rescission of Cleanup and Abatement Order R9-1999-0211 (CAO 99-0211)

Mr. Robertus:

The CWN!C has thoroughly reviewed the petition by the County of Orange and City of Laguna Niguel to rescind CAO 99-211. We have also reviewed the entire history of water monitoring results at the JO3P02, including testimonial statements made by staff engineer Frank Melborn at the original hearing held in San Diego (February 2000) when this CAO was invoked.

HISTORY

At the invocation hearing, it was the legal position of the SWRCB that the contaminated discharges from JO3P02 outfall pipe were in all likelihood, that is held a great deal of probability to be those of human waste origins. This was attributed to both the elevated levels and the inverted ratio/proportions of *fecal coliform* to *enterococcus* pathogenic concentrations.

According to Mr. Melborn, supported by credible experts in this field, when these two markers are roughly equal in samples, or if *enterococcus* exceeds *fecal* levels, then the discharges are of human origin or at least exhibit the same biological characteristics. If the ratio is 2 or 3 parts ENT. to 1 part FECAL, then for all intents and purposes these discharge violations should be source-tracked, the prevented or eliminated.

Two (2) dates in October of 2004 reflect that nothing has changed, no reductions, attenuations, nor successful tracking was accomplished. South Orange County, according to the County of Orange records, did not receive ANY rainfall on these dates. The water monitoring dates were: 10/05/04 and 10/13/04.

It should be noted that the copermitees alleged skewed results in the JANUARY 31, 2005 CWC 13225 Fourteenth Quarterly Report to the SDRWQCB. They contended that the samples taken throughout the Aliso Creek watershed per this Directive on 10/13/04 had elevated levels due to more than .1 of an inch of rainfall, that is $>.1$ " in a 24 hour period. CWN!C cites the report signatures for these submissions: UNDER PENALTY OF PERJURY.

CWN!C therefore contends that via the County's own rainfall records the copermitees have impeached themselves, rebutting their plea and perhaps intentionally submitted false reports during the entire history of sampling. CWN!C has repeatedly pointed this out to staff, as recently as February 9, 2005 to the SDRWQCB staff. (ATTACHED PDF to this submission)



Moreover, in September of 2000, scientists from University of California at Irvine found partial markers of the highly contagious HEP A at 5 different unconnected locations in the stormdrain (MS4) system of Kite Hill development that constitutes the main drainage into the J03P02 outfall pipe. These samples were from catchbasins and gutters, alarming to say the least. Despite demands from CWN!C, media saturation plus public outrage, the copermittees refused to do a follow-up epidemiological study.

As most scientists know, viruses like this can exist and reproduce in fresh water for 90 days in temperatures 60 degrees F or greater. Considering, according to the County and US Army Corps of Engineer (USACOE) studies that Aliso Creek never drops below 62 degrees F, this could mean that the J03P02 has been continuously replenishing/reintroducing enteroviruses for years.

SAMPLES FOR 10/05/04

TC: 53,000 FC: 36,000 ENT.: 29,000

SAMPLES FOR 10/13/04

TC: 9,100 FC: 7,800 ENT.: 10,300

The first rainfall >.1" fell on 10/17/04 according to County records.

To address the petition, we submit the following response/rebuttal:

- (1) The J03P02 has not met REC-1 standards. This is not supported by the database. The wetlands, as predicted by CWN!C, initially improved water quality but after a very brief period failed to attenuate or meet even REC-2 objectives.
Buried in the original request to USACOE, plus Cal Fish & Game to dam or divert below the Point of Discharge (POD) in a manufactured existent wetlands approximately 1/3 acre in size, it was acknowledged that for every 100-150,000 gallons of waste water, a minimum of 1 acre of SUBMERGED permeable detention is necessary.
Consider: Much of the flow (cfs) drains of the constructed upstream (above POD) wetlands created by Laguna Niguel are on a steep grade (strip along Alicia Parkway) which drains directly below the POD and a sub-standard sized holding area across Alicia (draining to the POD).
- (2) The cfs of the J03P02 varies, but is roughly 150-200,000 g/day during non-rainy events. In spite of the accolades or awards given this pilot/demo upstream, CWN!C feels that hundreds of thousands of taxpayer dollars have been wasted. Exhibiting biological characteristics of human waste, this drainage area should have had both a follow-up epidemiological (DNA or RNA) plus 1 1/2 to 2 SUBMERGED acre detention basin.
- (3) The contention that "state-of-the-art" tracking was performed is untrue. It has been acknowledged by the California Department of Conservation that this region of Orange County has been determined to be a highly seismic active zone for quite some time.



(4) CWN!C has attempted to bring this to the SDRWQCB staff attention to no avail or response. The City of Laguna Niguel has, in our estimation, also provided false or intentionally misleading testimony under penalty of perjury to the SWRCB on this issue. They have repeatedly claimed in submissions that there have been no slippages or slope failures which could have compromised waste water laterals or main lines in their municipality.

We contend that Moulton-Niguel Water District, their provider and wastewater carrier, has not been completely candid in this matter either.

To the contrary, Laguna Niguel, and especially Kite Hill and adjacent neighborhoods have been the subject of innumerable lawsuits between homeowners, HOA's, developers, the city and the County of Orange, which had jurisdiction and issued permits before incorporation in 1987.

(5) The only element of the rescission pleading we agree with is that this CAO is redundant to the CWC 13225 Directive.

CONCLUSION:

The CAO R9-1999-0211 was fatally flawed from its inception due to the following:
As testimony should reflect in the original hearing in February of 2000, pleadings by both CWN!C board and Attorney Daniel Cooper, *California Lawyers for Clean Water*, this order has no prescriptions or schedule regarding compliance.

There should have been target dates, reduction procedures/mechanisms, etc. Perhaps a 10%, per year goal, with the appropriate Assessed Civil Liability fine schedule for illicit discharges to receiving waters of the State. No such implementation or instructions were included despite our objections at that time nor subsequently.

It should come then as no surprise that levels have not been significantly reduced.
When CWN!C has challenged staff or SDRWQCB members regarding testing policies, procedures or protocols, we have been ignored.
When we challenged the feeble and questionable technologies procured or provided via substantial taxpayer funds, we have been ignored.

There has been no cleanup. There has been no abatement. The copermitees never complied with the previous MS4 stormwater permit (96-03), with the present one (2002-001), and CWN!C does not expect that they will improve water quality under a TMDL.

Enforcement is the most critical element of deterrence. Deterrence drives compliance, according to US EPA attorneys. It is unfortunate that SDRWQCB & staff do not concur.



PAGE 4 of (4)

With no ACL's, no local or regional enforcement is taking place. Violations, and especially CAO's, CWC Directives, or parameters of the NPDES permit processes without repercussions are worthless and the sampling results in South Orange County, Region 9, Aliso Creek Watershed reflect this.

EPA has determined there are economic benefits to non-compliance: The so-called **BEN Model**. **These copermitttees have saved millions by no local or state fine assessments.**

CWN!C contends that under federal law, we represent a "*disproportionately affected minority*," and notify the State of California that we hold the right to litigate under this legal .construct

Therefore, in spite of spending a supposed 1.5 million dollars on sampling these past 4 years under the CWC 13225 Directive, regardless of the inept yet expensive pilot projects throughout this watershed, Aliso Creek has not changed significantly since the 205 (j) Water Quality Study performed in 1999 by County and USACOE.

As a 303 (d) Listed Impaired Waterbody, removal from the list is mandated under federal law.

The copermitttees have acknowledged that no specific funds have been allocated/spent to remove it from this list according to a response by OC Watershed Manager Larry McKenney. (ATTACHED).

ALL attachments included in the E-mail response sent April 22, 2005.

Roger von Butow Chairman
Clean Water Now! Coalition Founded in 1998

Per your request I have compiled the following document to address the issues you raise in your email dated 1/27/05. Should you have any additional questions please feel free to contact Marilyn Thoms at (714) 834-2352.

ALISO CREEK 13225 DIRECTIVE COSTS

Monitoring Elements	4/01 – Present (Projected through 6/05)
Labor	\$ 876,865
Analytical Services	\$ 1,889,949
Sampling Supplies	\$ 38,033
Transportation	\$ 35,359
Other Supplies	\$ 6,272
Other Professional Services	\$ 30,503
Total Projected thru 6/05	\$ 2,876,981
(Total Actual thru 2/05)	(\$ 2,419,756)

ALISO CREEK 13225 DIRECTIVE COST SHARE PER CITY/COUNTY (Invoiced)

Permittee	4/01 – 6/03*
Aliso Viejo	\$ 230,153.85
Laguna Beach	\$ 49,797.09
Laguna Hills	\$ 171,346.15
Laguna Niguel	\$ 274,532.95
Laguna Woods	\$ 30,835.84
Lake Forest	\$ 188,497.98
Mission Viejo	\$ 136,874.50
County of Orange	\$ 136,674.61
Orange County Flood Control District	\$ 135,434.78
Total	\$1,354,347.76

*Cost Share Agreement for 7/03 – Present currently in negotiation

ALISO CREEK WATERSHED FEASIBILITY STUDY COST SHARE PER CITY/COUNTY

Aliso Creek Watershed Feasibility Study	1998 - Present
County of Orange/HBP	\$ 25,000 (plus in-kind services)
Laguna Beach	\$ 65,000
South Coast Water District	\$ 25,000
Los Alisos Water District	\$ 40,000
El Toro Water District	\$ 40,000
Tri Cities-Muni Water	\$ 40,000
Mission Viejo	\$ 40,000
South Orange County Wastewater Assoc	\$ 30,000
Lake Forest	\$ 40,000
Laguna Hills	\$ 25,000
Laguna Niguel	\$ 40,000
Laguna Woods	\$ 15,000
Aliso Viejo Community Association	\$ 3,000
Total	\$428,000

ALISO CREEK PILOT PROGRAM COSTS

Clear Creek System	\$ 750,000
JO3P02	City of Laguna Niguel Project
Woods Canyon	No project has been done in Woods Canyon
Dairy Fork	\$ 325,000
Munger (sand filter)	\$ 625,000 (estimated)

- We do not have projected costs for compliance linked with 303(d) listing
- Please contact the cities directly for their budget information. The budget for the County of Orange is located at <http://www.ocgov.com/finance/budget2005fn.asp>
- Hard copies of the 15th Quarterly Report had been mailed out and will be posted on our website www.ocwatersheds.com in the next few weeks.

CLEAN WATER NOW! COALITION

P.O. Box 4711, Laguna Beach, CA 92652 - 949.497.4816 - www.cleanwaternow.com

"To protect, preserve, and restore the integrity, stability, and biodiversity of the Southern Orange County watersheds, creek mouths, riparian and aquatic habitats."



February 16, 2005

Michael P. McCann, Supervising Engineer
California Regional Water Quality Control Board, San Diego Region
9174 Skypark Court, Suite 100
San Diego, CA 92123

**Re: CWC 13225 Directive, CAO 99-211 & NPDES Permit for South Orange County
Petition to Place Appellate Challenge by CWN!C
Agenda for May 11, 2005 SDRWQCB Meeting in Laguna Beach**

Mr. McCann:

The Clean Water Now! Coalition is extremely distressed by the County of Orange response signed by Larry McKenney in regards to changes in the 13225 Directive. The letter, contained as an insert, alludes to an agreement made with your staff to integrate this Directive as a component of the MS4 compliance program.

His letter, dated January 31, 2005, when coupled with your personal guidance and criticisms of the copermittees activities contained within the MS4 Annual Report in your letter dated January 20, 2005, are alarming and demand an open public hearing.

The CWN!C believes that it should have Designated Party Status at this hearing to address our lengthy list of objections and concerns. We base this status on several matters of public record:

- (1) When this 13225 Directive was issued on March 2, 2001, the copermittees immediately mounted an appellate challenge to its implementation. The CWN!C filed a cross complaint, and Executive Officer John Robertus generously gave us that status and placed our appeal on the agenda for the April 2001 hearing held in Laguna Beach City Council Chambers.
- (2) The CWN!C has the lengthiest and most engaged history of watershed and water quality protection in South Orange County since its founding in 1998.
- (3) The CWN!C was supported, in writing, to be the Designated Party by the Sierra Club, Surfrider, and other NGO's, thus representing them at the SWRCB hearings in Sacramento during the Fall of 2002. These hearings were in regard to the numerous legal challenges by the same copermittees to remove many of the prescriptions contained within the NPDES Permit 2002-001, approved February 13, 2002 by the SDRWQCB. The CWN!C was the ONLY South Orange County NGO to testify at those hearings.

Below is a partial list of our concerns and objections. We feel that by placing this dispute on the agenda in Laguna Beach it will facilitate more in depth public testimony by other NGO's, obviating the commuting time and typical meeting Public Comment testimonial time restrictions.



1.)

The copermitees were ordered to monitor outfall pipes at POD as part of their previous MS4 Permit, NPDES 96-03, in April of 1996. The only water quality sampling, with one (1) exception, performed per this permit in the Aliso Creek watershed was in the streambed proper. Testing and analysis took place between June and August, 1999, results contained in the Draft Final Report Planning Study, 205 (j), dated June 2000. The Directive and NPDES 2002-001 should have remedied this non-compliance and gross MS4 prescription violation behavior, forcing the copermitees to provide the pertinent database.

2.)

Until the adoption of the 13225 Directive, the CAO 99-211 (December 27, 1999) in Laguna Niguel, sub-division Kite Hill provided the **ONLY** storm drain POD information for assessment, analysis, and public review in the **ENTIRE** Aliso Creek mainstem and contributory units, natural or anthropogenic. Unfortunately, the SDRWQCB did not place a time frame or specific performance element in the CAO 99-211. There is no timeline (drop dead date) for compliance, no fine schedule for non-compliance violations, and it has no graduated scale for reaching compliance such as a 10% per year reduction until recreational standards are met. Over 5 years later and the pathogenic bacterial counts remain relatively unchanged.

3.)

The CWN!C has repeatedly challenged the written pleadings by the copermitees to reduce the Directives prescriptions. The CWN!C has repeatedly voiced its objections to the ongoing private negotiation meetings between staff and the copermitees to dilute this Directive, to remove or alter its parameters, procedures and protocols. As we were the plaintiffs regarding the initial challenges in this matter, it makes no sense for your staff to be unilaterally altering it without our comments, inclusion, or public testimony. This ignores, and perhaps violates public participation rights of the applicable environmental laws (NEPA, CEQA, *et al*).

Not all adjudicative or prescriptive hearings/meetings are exempt, especially ones which exclude the very NGO which assisted in this Directive's invocation.

4.)

Due to the copermitees non-compliance with the 96-03 NPDES, and the noted comments by you in your January 20, 2005 response, the Directive has been the only instrument, the only mechanism forcing these entities to provide a long-term database for independent analysis and peer review. "**Force**" being the keyword. NGO's are hampered by the dearth, the abject lack of a necessary database to properly assess the sources of pollutants and impairments. The copermitees request to integrate this Directive with the MS4, coupled with its continued historical requests over the arc of the Directives invocation to test fewer sites, are questionably self-serving and reduce reconnaissance. Their repeated reduced sampling program has already denigrated that gathering of critical long term sampling information. The incorporation being requested is specious and fatally flawed, intended only to deny the public negative data.



5.)

The contention that monitoring indicates little or no change regarding pollutant loading, the redundant arguments of "*ubiquitous origins*," therefore unknowable and impossible to reduce, do not justify the attenuation of sampling and are without merit.

The very process and mission statement that created the NPDES is ignored, and moreover, with little or no Assessed Civil Liabilities or local enforcement occurring, it remains doubtful that abatement will ever happen. Your letter confirms the lack of investigation procedures, any commitment to source abatement or enforcement actions with appropriate consequences.

The sampling results prove the opposite: There has been ZERO reduction of pollutant loading at innumerable sites, and as there are no delineated, specific fiscal consequences, there is no motivation to provide practicable analyses. Program development is unresponsive to the MS4 goals, so adjustments are non-existent.

If anything, the "*flat line*" of little or no change proves failure to track (identify) and abate, and failure to lessen/attenuate over this 4 year period.

In the 15th Quarterly Progress Report many submissions openly acknowledge no BMP evaluation or feasibility studies being performed.

The generic response to water quality sampling results from dry weather flows is that the copermittees refer to the testing done by the County of Orange. CWN!C contends that this testing analysis is also flawed, and ignores the value of rainy event results.

6.)

The County has repeatedly claimed that as little as .1" (one-tenth of an inch) of rainfall affects their ability to properly measure contaminant concentrations: "*Results are possibly influenced by ≥ 1 in. (.10") of rain in the previous 3 days.*" This nebulous, speculative verbiage has accompanied most of the copermittees submissions for the past 5 years. Yet there is no attendant engineering study (ies), no watershed-wide analyses of disparate drainage systems throughout, nor peer review of such allegations to confirm or support this contention.

Orange County rainfall records, as supplied by the County themselves at their website, reveals approximately 30 or so such events per year. If the copermittees are allowed this 3 day window of questionable monitoring and non-compliance, then they are not bound to comply for 90 days total.

If these Quarterly Reports carry the typical "*Submitted Under Penalty of Perjury*" clause, then CWN!C wishes to dispute the **October 13, 2004 sampling—Supplemental Data, Table B.5.**

THERE WAS NO RECORDED RAINFALL IN ORANGE COUNTY ON 10/13/05 ACCORDING TO COUNTY RECORDS! The first rainy event occurred October 17, 2004. The County's own database impeaches, refutes or contradicts the submission.

CWN!C has never been made aware of the proof that a singular .1" event pushes contaminants sufficiently to either evacuate/scrub the MS4 system or subsequently skew the results. Perhaps this would make an excellent candidate for an obviously over-looked drainage study, D.A.M.P. and follow up assessment.



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7.)

The confluence of disparate petitions and activities by the copermittees to provide less information to the public and the SDRWQCB in regards to the MS4 Permit status, CWC 13225, and CAO 99-211 are egregiously amplified by the *"permanent withdrawal"* of the Draft EIR No. 586 *Aliso Creek Watershed Management Plan (October 2003)*. This was withdrawn by the County in February of 2004, taken off of the Orange County Planning Commission agenda, and never revisited, re-circulated, or resuscitated for comments.

Though mandated by law, especially to prevent *"backsliding"* and insure public participation, the County has created venues and met exclusively with the MS4 copermittees for several years. Forbidding NGO participation, cloaking strategies, and updates from the public. The County has yet to show how it intends to remove this 303 (d) Listed Impaired Waterbody from its Category 1, 305 (b) status. Basin Plan Objectives are never addressed in submissions.

The public is ill-served when kept intentionally uninformed, disallowed, and disbarred from informational meetings, moreover with no public testimony for other public agencies or NGO's that wish to proactively address concerns.

It is our contention that by placing this subject on the agenda as a separate item, not as a simplistic MS4 Update but as an appellate dispute by CWN!C with Designated Party status it merits.

We feel that it timely as well due to the venue location. CWN!C believes that only in this manner can a complete, open and thorough airing of our numerous grievances be answered.

At present, there is great uncertainty and lack of clarity regarding the meetings between your staff and the copermittees. We feel that the shelter, the contention by the copermittees which purports that your private negotiation discussions are allowed because the Directive or other instruments are litigious or of enforcement nature we also feel is without merit. The Directive, NPDES, and CAO 99-211 have no *specified* enforcement thresholds/trigger mechanisms or fine (ACL) schedules contained within them, hence carry only litigious potential, not actuality.

CWN!C will promise in advance to keep our presentation of complaints down to approximately 12-15 minutes duration maximum if the SDRWQCB staff concurs with this imploring request. We consider this an attempt to remedy, but not complete relief.

CWN!C retains the right to proceed litigiously if we are rejected in this request.

I look forward to your response in this matter, knowing that there is ample time before May 11 to confer with you personally.

Warmest regards,

Roger von Butow Founder & Chairman of the Clean water Now! Coalition

April 21, 2005

John Robertus, Executive Director
San Diego Regional Water Quality Control Board
9174 Skypark Court, Suite 100
San Diego, CA 92123

15 APR 22 P 2:30

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

for May
bd. mtg.

RE: REQUEST TO RESCIND CLEANUP AND ABATEMENT ORDER NO. 99-211
(J03P02 STROM DRAIN IN THE CITY OF LAGUNA NIGUEL)

The South Laguna Civic Association, established in 1946, appreciates the opportunity to offer the following Public Comments pertaining to the Rescission of Cleanup and Abatement Order (CAO) No. R9-1999-0211 as submitted by Co-permittees County of Orange and the City of Laguna Niguel.

Background

The Cleanup and Abatement Order (CAO No. 99-211) for Storm Drain JO3PO2 and Sulphur Creek was issued in December 1999 following intense advocacy and media generated by the South Laguna Civic Association (SLCA) and others to enforce elements of the Clean Water Act prohibiting discharges of contaminants into the receiving waters of Aliso Creek and surrounding coastal resources at the watershed terminus.

From the community's perspective, Regional Water Quality Control Boards have a history of ignoring urban runoff discharges and CAO No. 99-211 was heralded as a major shift in regulatory enforcement and the first of it's kind in California. There is little doubt that the Co-permittees would not have addressed storm drain contamination of the creek without strong and persistent pressure from our community. The CAO therefore has a significant sense of ownership and stakeholder investment among citizen watershed advocates to demand accountability from City/County Officials and heretofore reluctant Regional Water Quality Control Boards.

Discussion

The management of urban runoff, particularly non-seasonal flows, has experienced a major paradigm shift in recent years. "Water Quality" is now linked to "Water Quantity", i.e., non-native elevated flows, as a major source of contamination and erosive impacts to natural occurring and legislatively protected creek and coastal receiving waters. Watershed managers and engineers are only now beginning to "connect the dots" of how imported water delivered to residential developments and other users winds up as toxic urban runoff.

Government agencies have discovered what citizens and non-governmental organizations (NGOs) have asserted for years - bureaucratic euphemisms, such as, "non-point sources" lack basic scientific precision and do not respond to the obvious fact that urban runoff is a

direct result of poor planning, management and disposal practices by the City and County of imported water sold in the subject residential subwatershed, at a profit, by the local water district.

In the January 26, 2005 City/County Request to Rescind, assertions are made that the co-permittees have installed BMPs (Best Management Practices) while continuing to discharge treated non-native flows into the creek that is then re-contaminated by ambient bacteria. Co-permittees are thus failing to incorporate emerging field-tested BMPs capable of not only removing contaminants but abating non-seasonal flows for beneficial reuse.

- BMPs deployed by the Irvine Company can harvest all non-native flows in a given subwatershed residential development to mitigate urban runoff pollution, promote water conservation and incorporate beneficial reuse opportunities.
- For more than ten years, Santa Margarita Water District has removed contaminated flows of 1,000,000 gallons per day for beneficial reuse to cleanup and abate polluted runoff near Oso Parkway.
- Buck Gully, in Newport Beach, utilizes diversion to the Orange County Sanitation District to protect public beach visitors and reduce pollution of State ASBS Marine Preserves.

As the term implies, BMP denotes the “Best” interventions. The co-permittees appear to justify their request to rescind with a list of practices far below the current understanding and applications of “Best Management Practices” and well outside minimum performance standards capable of eliminating elevated contaminated flow rates.

Public Policy Implications

Whereas subsequent studies reveal that JO3PO2 is not atypical of contaminated storm drain outlets, it remains among the first to be properly cited. “Trying” to solve the problem is not the same as effectively addressing the situation and is certainly not an acceptable standard of work performance among the general public. Citizens know that success breeds success while the reverse is also true.

An approval of the Request to Rescind will send the message within the Aliso Watershed and elsewhere that as long as a City “tries” to cleanup and abate water pollution, even if it ultimately fails, they will be allowed to continue business as usual wasting intervention funds while maintaining existing contaminated flows.

Likewise, Order No. R9-2002-001 requiring promulgation of yet another Aliso Creek Watershed Urban Runoff Management Plan (WURMP) will likely perpetuate a 20 year continuum of studies and plans that have proven incapable of adequately addressing water quality and water quantity contamination of the creek. We suggest a timely focus on achieving compliance at JO3PO2 to generate successful strategies, techniques and

technologies for application at other known “hotspots” for cumulative improvement in watershed management.

Recommended Actions

We remain committed to a successful outcome of CAO No. 99-211. As one of the first enforcement actions dealing with urban runoff, the Board and Co-permittees are urged to pursue a path of excellence rather than accept failure. Co-permittees have a unique opportunity to be genuine leaders in responsible watershed management by achieving full compliance.

Given the significant investment in citizen stakeholders to compel basic enforcement activities by the SDRWQCB, the following Recommended Actions are offered for consideration and incorporation:

1. Continue the Request to Rescind (ref: WPN:10-6000.05hassj) to the May 11, 2005 Board Meeting of the SDRWQCB for full Public Hearing at the City of Laguna Beach. The public is entitled to learn first hand from the Co-permittees why a series of failed BMPs justifies removal of the CAO. Public Hearing testimony will also familiarize the SDRWQCB Board and Co-permittees with contemporary BMPs capable of successfully mitigating elevated polluted flows into protected receiving waters.
2. In the event of an Administrative Decision by the Executive Officer, the SLCA hereby requests incorporation of one or more of the mitigation measures below:
 - A. As an emergency intervention, immediate diversion of all flows from JO3PO2 to the local sanitation district for treatment and possible beneficial reuse to protect Aliso Creek receiving waters, tidal wetlands, tidepools and coastal resources. This measure will contribute to incrementally reducing public health and safety risks in the watershed.
 - B. Until water conservation improvements such as public education, tiered rate structures and ET controllers have demonstrated efficacy (estimated three years or more), harvest flows with proven mobile filtration units (rated as an effective BMP) for local beneficial reuse to supplement and improve reclaimed water resources in the immediate area among County Parklands and/or institutional users.
 - C. Designate numerical targets and timelines for significant flow rate reduction. Elevated flows are a known source of creek/coastal ecosystem pollution, soil erosion and costly stream bank destabilization. Such non-native flows are the known principle transport mode distributing residential subwatershed contaminants.

The proper enforcement and successful follow through of efforts by the SDRWQCB remains central to our community's and the general public's health and welfare. A tacit approval of the Request to Rescind will fail to achieve compliance with a landmark enforcement order and allow polluters to continue discharges into protected receiving waters. The public deserves nothing less than successful remediation of CAO No. 99-211.

Summary

The SLCA clearly understands and appreciates the numerous efforts of the Co-permittees to achieve compliance with CAO No. 99-211. However, an arbitrary Executive Order offers no binding assurances that polluted water will cease to flow from JO3PO2. Along with the preceding comments and recommendations, we therefore reserve the right to an appeal with the State Water Resources Control Board of any decision likely to perpetuate rather than solve the problem.

Thank you for your consideration and follow-up comments.



Michael Beanan
Director

cc: John Minan, Chair, SDRWQCB 9

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